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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 ANTHONY ROSS BLACK,
10 Petitioner,
11 vs.
12 E.K. McDANIEL, *et al.*,
13 Respondents.
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3:05-cv-0316-HDM-VPC

ORDER

15 This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by
16 pro se petitioner Anthony Black. On June 23, 2008, this Court denied the petition for writ of habeas
17 corpus and determined petitioner was not entitled to a certificate of appealability (docket #37). The
18 Clerk entered judgment the following day (docket #38). Petitioner then filed a motion to alter or
19 amend the judgment (docket #47) and a motion for appointment of counsel (docket #46). This Court
20 denied those motions (docket #52).

21 Now before the Court is petitioner's motion for certificate of appealability (docket
22 #56) and motion for appointment of counsel (docket #57). This Court has previously denied
23 petitioner a certificate of appealability, and the Ninth Circuit Court of Appeals also denied a
24 certificate of appealability (docket #50).

In order to proceed with an appeal from this court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make “a substantial showing

1 of the denial of a constitutional right" to warrant a certificate of appealability. *Id.* The Supreme
2 Court has held that a petitioner "must demonstrate that reasonable jurists would find the district
3 court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S.
4 473, 484 (2000).

5 The Supreme Court further illuminated the standard for issuance of a certificate of
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court stated in that case:

7 We do not require petitioner to prove, before the issuance of a COA, that
8 some jurists would grant the petition for habeas corpus. Indeed, a claim
9 can be debatable even though every jurist of reason might agree, after the
10 COA has been granted and the case has received full consideration, that
11 petitioner will not prevail. As we stated in *Slack*, "[w]here a district court
has rejected the constitutional claims on the merits, the showing required
to satisfy § 2253(c) is straightforward: The petitioner must demonstrate
that reasonable jurists would find the district court's assessment of the
constitutional claims debatable or wrong."

12 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

13 The court has considered the issues raised by petitioner, with respect to whether they
14 satisfy the standard for issuance of a certificate of appeal, and the court determines that none meet
15 that standard. Petitioner has not shown that reasonable jurists would find this Court's assessment of
16 petitioner's constitutional claims debatable or wrong. The Court will deny the motion for certificate
17 of appealability. Moreover, the Court will deny the motion for appointment of counsel. This Court
18 has previously denied petitioner's motions for appointment of counsel, and petitioner has not shown
19 any change in circumstances at this time.

20 **IT IS THEREFORE ORDERED** that the motion for certificate of appealability
21 (docket #56) is **DENIED**.

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1 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (docket
2 #57) is **DENIED**.

3 Dated this 28th day of September, 2009.

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7 UNITED STATES DISTRICT JUDGE
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